



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Dear

We have considered your request to reclassify B as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code. Based on the information provided, we have concluded that B does not meet the requirements for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i). The basis for our conclusion is set forth below.

Facts

B is a nonprofit, non-membership corporation under the laws of the State of C, and is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Code and as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi).

B is organized for religious purposes, in particular to glorify God by communicating the gospel in unreached areas and people groups, establishing local churches, developing local church leaders, and helping the churches become "responsible for their own edification and multiplication." B's primary activities are establishing new churches, training church leaders and church planters, and promoting Biblical literacy. Over 400 B missionaries currently work in D countries worldwide.

B amended its Articles of Incorporation (in date e) to refer to itself as a "church" as well as a "global evangelistic ministry." It is governed by a self-elected Board of Directors. It does not have members, either legal or ecclesiastical.

B employs missionaries who go to live in areas of the world where the Gospel has not previously been preached. They integrate with the local community, build relationships, and begin worship services that they hope will grow into local churches. The missionaries train indigenous persons to become leaders in these local churches. B seeks to emulate the model of the 1st century church. It believes that its role is to establish and provide spiritual guidance to its affiliate churches, but not to control them. The F section of B's G document describes a B missionary as an "equipper" whose role is to "facilitate and empower church leaders as they take initiatives." B rejects the assumption of a settled pastoral role by its missionaries, and warns them not to become immersed in pastoral tasks in the churches they help to establish. The Continuum uses the acronym "START" to describe the steps a B missionary should take in establishing a church:

S – Show them how!

T – Tell them how!

A – Allow them to try!

R – Review the results!

T – Turn them loose!

B considers its affiliate churches to be "autonomous" from B because they are not legally controlled by B. B exercises oversight and authority over its missionaries, but does not exercise any direct supervision or control over its affiliate churches or their leaders. Nor does B exercise any administrative or financial oversight over these churches, which are not "members" of B. Other than the presence of its missionaries in newly established churches, B has no structural connection with these churches, which are organizationally and ecclesiastically independent. Although B missionaries may help leaders develop appropriate church structures that are appropriate for their respective cultures, local churches are ultimately responsible for establishing their own church structures and governments. Once these churches reach sufficient levels of maturity, the missionaries step out of any leadership positions they may have temporarily occupied in such churches. Many of these churches maintain an affiliation with B that is typically not formalized.

B's affiliate churches generally remain affiliated with B on a relational—rather than a structural or organizational—level. B seeks to influence its affiliate churches through their relationships with B missionaries, who often continue to provide support and guidance to these churches. B does not impose any reporting requirements on its affiliate churches. It states that an affiliate church "could disassociate itself from [B] without any legal consequences."

Some of the churches established by B form associations within their respective countries or regions. For instance, B has entered into a Memorandum of Understanding with H, an association of local churches in I. The agreement provides that H and B will partner together in various missions activities. It describes B as a "non-denominational mission agency," and recites that H and its churches are "completely autonomous from [B]."

In its literature, B describes itself as a "mission," "missions organization," "mission board," "foreign mission organization," "global missionary fellowship," "missions agency," and "mission agency," but not as a "church." Its literature often distinguishes itself, as a missions agency or organization, from churches with which B partners. For instance, its web site states,

[B] believes the local church is God's chosen vehicle to spread the Gospel. As a missions agency, our role is to facilitate the plan God has given each church. Our intent is to assist churches in implementing God's unique plan for them. At times this will mean steering a church to another agency that better fits their vision.

B typically requires each of its missionary candidates to have taken the equivalent of one year of biblical studies in a Bible college or seminary, and to demonstrate sufficient biblical understanding, as conditions of being appointed a B missionary. However, these ministry personnel do not have to be ordained ministers. B does not ordain or license its missionaries as ministers.

Nor does B ordain or license ministers of the local churches or establish uniform formal qualifications for ordination of such ministers. Rather, local churches are responsible for ordaining their own ministers.

B disseminates a code of doctrine, which includes its Statement of Faith and Doctrinal Statement. B missionaries ensure that the doctrinal statements of the churches they establish are compatible with B's Doctrinal Statement. B also has established policies for its staff members, including adherence to Biblical standards of sexual conduct and a prohibition on sexual harassment. It may discipline or even terminate an employee who violates such policies. However, B does not have a code of discipline to which it requires affiliate churches to subscribe. B's literature does not describe its use of any traditional means of ecclesiastical discipline (e.g., confession, withholding of sacraments, excommunication) utilized by churches. Although B missionaries assist affiliate churches in resolving disciplinary issues, it is those churches—not B—that are responsible for disciplining their members.

B's central office staff members in J oversee the activities of B missionaries worldwide. They recruit, screen, and select new missionaries, provide administrative and financial oversight of missionaries, and produce publications related to B's ministry. The central office hosts semi-weekly prayer meetings for 15-35 staff members. Three times a year, B hosts a "Day of Prayer" for its office staff. These meetings typically consist of prayer, singing, and Bible study and instruction.

B does not require its missionaries to renounce their membership in other churches or religious orders to become missionaries of B. B asks, in its application for prospective missionaries, for information about the applicant's church. The application also asks whether the applicant has discussed missionary service with his/her pastor. B indicates that many of staff members are members of local churches.

B's affiliate churches offer regular religious instruction of the young. B assists new churches in establishing programs for such instruction. In addition, B has established a ministry in K that teaches Christian values to at-risk children.

B owns and operates a Bible school for ministers in L and training center for ministers in M, and organizes training conferences and educational programs for leaders of its affiliate churches. B is closely affiliated with several other international schools and training programs for ministers.

Law

Section 509(a)(1) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(i) of the Code describes a church or convention or association of churches.

Section 170(b)(1)(A)(vi) of the Code describes a tax-exempt organization that normally receives a substantial part of its support from a government unit or from direct or indirect contributions to the general public.

In De La Salle Institute v. United States, 195 F.Supp. 891 (N.D. Cal. 1961), the court held that a nonprofit corporation composed of non-clerical members of a religious order that operated schools, a winery, and a chapel, among other activities, was not a church. It explained that although the corporation was closely affiliated with the Roman Catholic Church, it was separate and distinct from that church for federal tax purposes. Id. at 901. The corporation's operation of a chapel did not convert it into a church, as this activity was incidental to the corporation's primary activities of operating the school and winery. The court noted, "[t]he tail cannot be permitted to wag the dog. The incidental activities of plaintiff cannot make plaintiff a church." Id. at 901-02.

In Chapman v. Commissioner, 48 T.C. 358 (1967), an interdenominational organization sent out evangelical teams to preach throughout the world and to establish small indigenous churches. These teams used dental services as the initial means by which they contacted prospective converts to Christianity. The court held that the organization was not a church for federal tax purposes, in part because it was interdenominational and independent from the churches with which its members were affiliated. The organization's religious services and preaching, though functions normally associated with a church, were not its primary activities and therefore were not determinative of church status. Id. at 364. The court characterized the group as an "evangelical organization" and a "religious organization comprised of individual members who are already affiliated with various churches," but not as a church. It noted that although every church may be a religious organization, not every religious organization is a church. Id. at 363.

In American Guidance Foundation, Inc. v. United States, 490 F.Supp. 304 (D.D.C. 1980), the court recognized the Internal Revenue Service's 14-part test in determining whether a religious organization was a church. The 14 criteria are:

- 1) a distinct legal existence;
- 2) a recognized creed and form of worship;
- 3) a definite and distinct ecclesiastical government;
- 4) a formal code of doctrine and discipline;
- 5) a distinct religious history;
- 6) a membership not associated with any other church or denomination;
- 7) an organization of ordained ministers;
- 8) ordained ministers selected after completing prescribed studies;
- 9) a literature of its own;
- 10) established places of worship;
- 11) regular congregations;
- 12) regular religious services;
- 13) Sunday schools for religious instruction of the young; and
- 14) schools for the preparation of its ministers.

The court in American Guidance stated that "while some of these [criteria] are relatively minor, others, e.g., the existence of an established congregation served by an organized ministry, the provision of regular worship services and religious education for the young, and the dissemination of a doctrinal code, are of central importance." Id. at 306.

In Foundation of Human Understanding v. Commissioner, 88 T.C. 1341 (1987), the court found that an exempt organization that operated a radio ministry and established local congregations qualified as a church for federal tax purposes, because it met most of the 14 IRS criteria for determining church status. Although the court found these 14 criteria to be helpful in deciding what constitutes a church, it did not adopt them as a definitive test. It explained that the IRS will also consider any other facts and circumstances that may bear upon the organization's claim for church status under section 170(b)(1)(A)(i) of the Code. Id. at 1358. Although the organization's broadcasting and publishing functions constituted a large percentage of its total receipts and expenditures, these functions did not overshadow its church activities, which the court found to be more than incidental. Id. at 1360-61. The court noted that many of the organization's followers looked upon the organization as their only church. Id. at 1359.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the court noted that of central importance in determining whether an organization constitutes a church for federal tax purposes is the existence of an established congregation served by an organized ministry. The court found that the organization did not have an established congregation because "nothing indicates that the participants considered [the organization] to be their church." Id. at 339.

In Lutheran Social Service of Minnesota v. United States, 758 F.2d 1283 (8th Cir. 1985), the Fifth Circuit determined that a "convention or association of churches," in the context of section 6033 exemptions from filing annual information returns, refers to the organizational structure of congregational churches, and that Congress included the phrase to treat congregational and hierarchical churches equally.

Rev. Rul. 74-224, 1974-1 C.B. 61, held that a cooperative undertaking of churches of different denominations that works together to carry out religious activities constitutes a "convention or association of churches" within the meaning of section 170(b)(1)(A)(i) of the Internal Revenue Code. The ruling noted that the term "convention or association of churches" historically referred to a cooperative undertaking by churches within the same denomination.

Analysis

B claims that it is a church as described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code because it meets most of the 14 criteria the IRS uses in determining whether an organization qualifies as a church for federal tax purposes. See American Guidance Foundation, 490 F.Supp. at 306, note 2. These criteria are helpful in deciding what constitutes a church for federal tax purposes, but are not a definitive test. See Foundation of Human Understanding, 88 T.C. at 1358.

B meets several of these 14 criteria. For instance, it has a distinct legal existence, a formal code of doctrine, a recognized creed, a distinct religious history, and literature of its own. It also owns and operates several schools and training programs for pastors. However, these are not distinctive characteristics of a church, but are common to both churches and non-church religious organizations. Meeting these criteria is not sufficient to establish B as a church within the meaning of section 170(b)(1)(A)(i) of the Code.

B's primary activity is the establishment and support of new churches. It essentially serves as an incubator for and advisor to its affiliate churches, providing spiritual and practical guidance and training through its missionaries. These churches are initially led by B missionaries who train indigenous leaders to assume leadership of each autonomous church, which then operates independently from the missionaries. Although B exercises oversight and authority over its missionaries, it does not have any formal authority over the churches or their leaders, or even a formal affiliation with most of the churches. Like the missionary society in Chapman, supra, B is interdenominational and independent from the local churches with which its missionaries are affiliated, Chapman, Id. at 364. Thus, B and its affiliate churches are not united by a definite and distinct "ecclesiastical government."

Because B's affiliate churches are separate and distinct from B, their members, worship services, and other church activities are also separate and distinct from those of B. See De La Salle Institute, 195 F.Supp. at 901. Thus, B does not have a regular congregation of its own that engages in regular worship services in an established place of worship.

B does not require its missionaries to renounce their membership in other churches or religious orders to become missionaries of B. In fact, many B staff members are members of local churches that are separate and distinct from B. As in Spiritual Outreach Society, 927 F.2d at 339, B has failed to establish that its missionaries, its affiliate churches, or those churches' members consider B to be their church. Accordingly, B has neither a regular congregation nor a "membership not associated with any other church or denomination."

B has not shown evidence of having a code of discipline for its affiliate churches. For instance, B's literature does not describe its use of any traditional means of ecclesiastical discipline (e.g., confession, withholding of sacraments, excommunication) utilized by churches, either in disciplining affiliate church members or members of B's own staff. B's affiliate churches—not B—exercise discipline over their members.

Although B has established training requirements for and provides some training to the missionaries it appoints, it does not require them to be ordained or licensed. Nor does B ordain or license ministers of the local churches it establishes. Rather, its affiliate churches are responsible for ordaining their own ministers. Thus, B is not an "organization of ordained ministers."

B has established a ministry in K that teaches Christian values to at-risk children. In addition, B assists its affiliate churches in establishing programs for religious instruction of the young within their churches. However, B has not established that it operates its own Sunday schools or comparable programs for the regular religious instruction of the young within a congregation.

B's central office hosts semi-weekly prayer meetings for 15-35 staff members, and a periodic "Day of Prayer" for its office staff. However, these activities are incidental to the main activity of the central office, which is to exercise administrative, financial, and operational oversight over B's worldwide ministry. Just as the operation of a chapel did not convert the corporation in De La Salle Institute, supra, into a church, because this activity was incidental to the corporation's primary activities of operating a school and winery, the conduct of prayer services does not convert B's administrative office into a church within the meaning of section 170(b)(1)(A)(i) of the Code.

Further, B does not identify itself publicly as a church. Neither B's web site nor the literature it distributes to the public refers to B as a church. Rather, B describes itself as a "mission," "missions organization," "mission board," "foreign mission organization," "global missionary

fellowship," "missions agency," and "mission agency." Its literature often distinguishes B, as a missions agency or organization, from churches with which B partners. This undermines B's contention that it is a church for federal tax purposes.

Just as B does not qualify as a church for federal tax purposes, it does not qualify as an association or convention of churches. B is neither a cooperative undertaking of churches within a denomination nor a cooperative undertaking of churches across denominations, as described in Rev. Rul. 74-224, supra. The churches B establishes are independent from B and from one another and, other than clusters of churches within a given culture (e.g., H), do not appear to work or minister together. B-established churches in one culture do not appear to be connected in any kind of ongoing ministry with B-established churches in other cultures. Although they have a common parent in B, they do not share common supervision or control, or a common organizational structure as referenced in Lutheran Social Service of Minnesota, supra.

B missionaries do not bring new churches within the organizational structure of an "association" or "convention." Rather, they establish independent churches that function and minister within their respective cultures, separate and distinct from B. Although some of these churches maintain an affiliation with B, and B seeks to exert spiritual influence over them, they do not maintain a structural or organizational relationship with B or its other affiliate churches. Therefore, B does not qualify as a convention or association of churches.

Conclusion

B does not meet most of the criteria for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code that courts have recognized as being of central importance: the existence of an established congregation, the provision of regular worship services and religious education for the young, and the dissemination of a doctrinal code. See American Guidance Foundation, Inc., 490 F.Supp. at 306; Spiritual Outreach Society, 927 F.2d at 339. Although B disseminates a doctrinal code (its "doctrinal statement"), it does not meet the other central criteria for determining church classification for federal tax purposes. In particular, it does not have a regular, established congregation of members who meet together, as a church, for regular worship services and instruction of the young.

Nor does B meet most of the other criteria the IRS considers in determining whether to classify an organization as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. In particular, B does not ordain ministers, operate Sunday schools or similar programs for religious instruction of the young, or have a code of discipline, a distinct ecclesiastical government, an established place of worship, or a membership not associated with other local churches or denominations.

Although B's affiliate churches may meet most of the criteria for classification as a church for federal tax purposes, B is separate and distinct from those churches. Nor do B or its affiliate churches share the interconnectedness necessary to constitute a convention or association of churches.

Accordingly, based on all the facts and circumstances, B has failed to establish that it meets the requirements for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. Instead, B will continue to be classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

You may also fax your statement to the person whose name and fax number are shown in the heading of this letter. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure: